

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 2072 CUTTACK, FRIDAY, DECEMBER 5, 2014 / MARGASIRA 14, 1936

LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 25th November 2014

No. 9666—IR-(ID)-158/2014-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st October 2014 in I. D. Case No. 1 of 2013 of the Presiding Officer, Industrial Tribunal, Bhubaneswar wherein the industrial dispute between the Management of (1) The Senior Executive (Admn.) Odisha Stevedores Ltd., O.S.L. Tower, Badapadia, Paradeep, Jagatsinghpur, (2) The Chief Executive, Paradeep Phosphates Ltd., P.P.L. Township, Paradeep & its Workman Shri Ajay Samal was filed by the workman under Section 2-A (2) of I.D. Act, 1947 for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 1 OF 2013 [U/s 2-A(2)]

Dated the 31st October 2014

Present :

Shri B. C. Rath, o.s.j.s. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

- | | |
|--|----------------------------|
| The Management of — | .. First Party—Managements |
| (1) The Senior Executive (Administration),
Odisha Stevedores Ltd., O.S.L. Tower,
Badapadia, Paradeep, Jagatsinghpur. | |
| (2) The Chief Executive,
Paradeep Phosphates Ltd.,
P.P.L. Township, Paradeep,
Dist. Jagatsinghpur. | |

And

Its workman,
 Shri Ajay Samal,
 S/o Indramani Samal,
 Vill. Dashmankula, P.O. Dhanua,
 P.S. Tirtol, Dist. Jagatsinghpur.

.. Second Party—Workman

Appearances :

Shri B. P. Tripathy, Advocate	.. For the First Party—Management No.1
Shri N. K. Mishra, Advocate	.. For the First Party—Management No.2
Shri T. Lenka, Advocate	.. For the Second Party—Workman

AWARD

This is an application filed by the above named second party workman under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short, 'the Act') challenging his dismissal from service to be illegal and unjustified and praying for his reinstatement in service with full back wages and other consequential service benefits.

2. On being noticed both the first party managements namely, M/s Odisha Stevedores Ltd., and M/s Paradeep Phosphates Ltd., appeared and filed their written statements refuting the allegations raised by the second party workman and further challenged the maintainability of the application. Accordingly, issues have been settled including the issue on the point of maintainability of the dispute.

3. The present order arises out of the preliminary objection raised by the first party management No. 1 i.e., M/s Odisha Stevedores Ltd., on the ground that the application being one preferred under Section 2-A of the Act by the second party workman in individual capacity on account of his dismissal allegedly on the ground of misconduct of misbehaving with the Superior Officer of the Principal Employer and the same having been filed in this Tribunal after incorporation of Clauses (2) and (3) in Section 2-A of the Act, the second party workman cannot take advantage of the said provision in view of his dismissal with effect from the 19th April 2005 i.e. prior to the incorporation of the provisions, which have been inserted in the main Act vide Notification, dated the 15th September 2010 and as per the settled principle the benefit of the said provision cannot be allowed in favour of a workman with retrospective effect. Furthermore, it has been contended and argued on behalf of the first party management No. 1 that in view of the specific provision under Section 2-A (3) of the Act, which mandates that such an application is to be filed within three years of the dismissal/termination of service, the application of the second party workman is time barred and not maintainable.

4. The first party management No. 2 has filed a separate petition raising objection to its impleadition to the case and it has prayed to delete it from the dispute raising a contention that there is no employer-employee relationship between it and the workman. The second party workman being an employee of the first party management No. 1 and dismissed by the said employer, the first party management No. 2 is no way connected with the dispute and liable for the remedy/relief sought by the second party workman.

5. The facts, in a narrow compass, relevant for appreciation of the dispute and the issues raised by the parties and disposal of the objection are that the second party workman being an employee of the first party management No. 1 was engaged to work in the establishment of the first party management No. 2. As it emerges from the pleadings and contentions raised by the parties including the stand taken by the second party workman in his claim statement that the second party workman was placed under suspension on allegation of misbehaving with the superior officials of the management No. 2 while being engaged to work in the establishment of the said first party management No. 2. He was charge sheeted by the first party management No. 1 for such allegation and a domestic enquiry was conducted before imposing punishment of dismissal on him. He has also challenged the fairness and propriety of the said enquiry. According to him, the order of dismissal made on 19-4-2005 is illegal and unjustified.

6. The first party management No. 1 refuted the allegations of the second party workman contending that a due enquiry was initiated against the second party workman for his wilful insubordination and disobedience of orders as well as for his disorderly and indecent behavior at the working place and threatening, abusing and assaulting his superior authorities and co-workers. Being found indulged in serious acts of misconduct he was dismissed from service with effect from the 19th April 2005. According to it, no complaint was made to the D.L.O. till filing of the present application in this Tribunal and the second party having failed to raise the dispute within the stipulated period of three years of his dismissal before the labour machinery as well as in this Tribunal, the dispute in present form is not maintainable on account of the provisions of Section 2-A (3) of the Act. Besides, it is contended that the second party workman cannot resort to the provisions of Section 2-A (2) of the Act as the said provision has been incorporated in the Act, with effect from the 15th September 2010 whereas the alleged dismissal was effected on 19-4-2005. The provision of Section 2-A (2) of the Act cannot be resorted to with retrospective effect and as such the application preferred under sub-section (2) of Section 2-A of the Act is not maintainable. Besides the above stand of the first party management, the first party management No. 2 has also challenged its impleadition as a party to the present dispute contending that no employer-employee relationship subsists between it and the second party workman.

7. The learned counsel appearing for the second party workman has strenuously and vehemently opposed to the preliminary objection raised by the first party manegments contending that the Hon'ble Apex Court in the case of D. P. Maheswari Vrs. Delhi Administration, reported in 1983 (47) FLR 477 having clearly observed that the Tribunals particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardies industrial peace should decide all issues in dispute at the same time without trying some of them as preliminary issues, the preliminary objections raised on behalf of the first party managements are not tenable.

8. As it appears from the pleadings and contentions of the parties, there is no serious dispute to the fact that the second party workman was dismissed from service with effect from the 19th April 2005 followed by a domestic enquiry and the second party workman has filed the present application in this Tribunal on 4-1-2013 by resorting to the provisions of Section 2-A (2) of the Act,

after sub-section (2) has been engrafted in Section 2-A of the Act, with effect from the 15th September 2010. Therefore, doubt can be entertained on the maintainability of the application on account of the same being preferred directly by the second party workman before this Tribunal. Moreover, sub-section (3) of Section 2-A of the Act requires that an application under Section 2-A (2) shall be preferred within three years of dismissal/termination of an employee. In the case in hand, the dismissal of the second party workman was effected on 19-4-2005 and the present application has been filed in this Tribunal on 4-1-2013 i.e. after lapse of more than seven years from the date of dismissal of the workman. Furthermore, there is no specific pleading or document on behalf of the second party workman that he had filed any complaint before the concerned District Labour Officer soon after his dismissal in order to raise an industrial dispute as contemplated under Section 2-A of the Act. In that view of the matter, the dispute raised by the second party workman is found to be not maintainable being time barred under Section 2-A (3) of the Act.

9. In view of the discussions made in the preceding paragraphs, I do not find it necessary to deal with the objection raised on behalf of the first party management No. 2 and for the reasons assigned above I am inclined to hold that the present application preferred by the second party workman under Section 2-A (2) of the Act is not maintainable.

Dictated and corrected by me.

B. C. RATH
31-10-2014
Presiding Officer
Industrial Tribunal
Bhubaneswar

B. C. RATH
31-10-2014
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor
M. NAYAK
Under-Secretary to Government